

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**PVM I Associates, Inc., d/b/a King David Center;  
and U.S. Management, Inc./I.I.M.S. and 1115  
Nursing Home Hospital and Service Employees  
Union-Florida. Case 12-CA-17606**

April 26, 1996

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Pursuant to a charge filed on December 13, 1995, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12-RC-7692. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On March 14, 1996, the General Counsel filed a Motion for Summary Judgment. On March 18, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 8, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

321 NLRB No. 7

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

PVM I Associates, Inc., d/b/a King David Center, a Florida corporation with an office and place of business located in West Palm Beach, Florida, has been engaged in the business of operating a skilled nursing facility called King David Center. During the 12 months preceding issuance of the complaint, the King David Center derived gross revenues in excess of \$50,000 directly from points outside the State of Florida.

At all material times, U.S. Management, Inc./I.I.M.S. (U.S. Management), a New York Corporation with an office and place of business located in Brooklyn, New York, has been engaged in the business of supplying personnel to various employers, including King David Center. At all material times, King David Center and U.S. Management have been parties to a contract which provides, in effect, that U.S. Management is the agent for King David Center in connection with supplying King David Center with nursing department personnel at King David Center's West Palm Beach, Florida facility. At all material times, U.S. Management has possessed control over the labor relations policy of King David Center for certain employees of King David Center at its West Palm Beach, Florida facility.

We find that at all material times King David Center and U.S. Management have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and joint employers of certain employees of King David Center at its West Palm Beach, Florida facility, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. The Certification

Following the election held August 5, 1994, the Union was certified on November 1, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time nursing department CNAs and dietary employees employed by Respondent at the King David Center located in West Palm Beach, Florida; excluding all other employees, including LPNs, RNs, care plan CNAs, medical records CNAs, ward clerks, central supply aides, dietary technicians, maintenance employees, activities aides, restorative therapy aides, respiratory therapists, nursing administrative secretaries, receptionists, admissions clerks, physical therapy aides, physical therapy assistants,

guards and supervisors as defined in the Act. The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

Since about August 18, 1995, the Union has requested the Respondent to bargain, and, since about the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By refusing on and after August 18, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, PVM I Associates, Inc. d/b/a King David Center; and U.S. Management, Inc./I.I.M.S., West Palm Beach, Florida, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with 1115 Nursing Home Hospital and Service Employees Union-Florida as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time nursing department CNAs and dietary employees employed by Respondent at the King David Center located in West Palm Beach, Florida; excluding all other employees, including LPNs, RNs, care plan CNAs, medical records CNAs, ward clerks, central supply aides, dietary technicians, maintenance employees, activities aides, restorative therapy aides, respiratory therapists, nursing administrative secretaries, receptionists, admissions clerks, physical therapy aides, physical therapy assistants, guards and supervisors as defined in the Act.

(b) Post at its facility in West Palm Beach, Florida, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 26, 1996

---

William B. Gould IV, Chairman

---

Margaret A. Browning, Member

---

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with 1115 Nursing Home Hospital and Service Employees Union-Florida as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time nursing department CNAs and dietary employees employed by us at the King David Center located in West Palm Beach, Florida; excluding all other employees, including LPNs, RNs, care plan CNAs, medical records CNAs, ward clerks, central supply aides, dietary technicians, maintenance employees, activities aides, restorative therapy aides, respiratory therapists, nursing administrative secretaries, receptionists, admissions clerks, physical therapy aides, physical therapy assistants, guards and supervisors as defined in the Act.

PVM I ASSOCIATES, INC. D/B/A KING  
DAVID CENTER; AND U.S. MANAGEMENT, INC./I.I.M.S.